

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER BASS,

Plaintiff,

v.

SEAN DAVID MORTON; DARYL WEBER;  
MELISSA MORTON; 27 INVESTMENTS  
LLC; MAGIC EIGHT BALL  
DISTRIBUTING, INC.; VAJRA  
PRODUCTIONS LLC; DELPHI  
ASSOCIATES INVESTMENT GROUP,

Defendants.

NO. CV-08-253-EFS

**ORDER DENYING THE MORTON  
DEFENDANTS' MOTION TO VACATE**

On August 3, 2009, the Court entered default against Defendants Sean David Morton and Melissa Morton. (Ct. Rec. [77](#).) The Morton Defendants now seek to vacate the default on jurisdictional grounds. (Ct. Rec. [87](#).)<sup>1</sup> After review, the Court finds that not only does subject-matter

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<sup>1</sup>The Morton Defendants' motion caption - "Motion to Vacate Default Judgment" - is a misnomer. The Court has not entered judgment; instead, the Court entered default and deferred entering judgment until it received from Plaintiff Christopher Bass a detailed legal and factual basis for all claimed damages.

1 jurisdiction exist, but also that the Morton Defendants waived any  
2 personal jurisdiction and venue objections by not raising these defenses  
3 in their initial pleadings. The reasons for the Court's Order are set  
4 forth below.

## 5 **I. Discussion**

### 6 **A. Rule 60 Relief**

7 As an initial matter, it is necessary to discuss the procedural  
8 vehicle that the Morton Defendants rely on for relief. The Morton  
9 Defendants moved to vacate the Court's entry of default under Federal  
10 Rule of Civil Procedure 60(b). Rule 60 permits a party to seek relief  
11 from a court order or judgment when, for example, there is mistake,  
12 surprise, excusable neglect, newly-discovered evidence, or fraud. FED.  
13 R. CIV. P. 60(b). But considering that the Morton Defendants' requested  
14 relief is predicated on a challenge to the Court's jurisdictional power  
15 to enter default, Rule 60 is inapplicable, and the proper procedural  
16 vehicle is a Rule 12(b) challenge.

### 17 **B. Subject-Matter Jurisdiction**

#### 18 **1. Standard**

19 "The basic statutory grants of federal-court subject-matter  
20 jurisdiction are contained in 21 U.S.C. § 1331, which provides for  
21 'federal-question' jurisdiction, and § 1332, which provides for  
22 'diversity of citizenship' jurisdiction." *Arbaugh v. Y & H Corp.*, 546  
23 U.S. 500, 501 (2006). A plaintiff properly invokes federal question  
24 jurisdiction when it is apparent from her complaint that either 1) the  
25 plaintiff's cause of action was created by federal law, or 2) if the  
26 plaintiff's cause of action is based on state law, that a federal law

1 that creates a cause of action or reflects an important national interest  
2 is an essential component of the plaintiff's claim. *Id.*; see also ERWIN  
3 CHEMERINSKY, FEDERAL JURISDICTION 295 (Aspen Publishers 2007).

## 4       **2. The Securities Acts**

5       Plaintiff insists that federal subject-matter jurisdiction exists  
6 here because his cause of action is created by federal law -  
7 specifically, the Securities and Exchange Acts of 1933 & 1934 ("the  
8 Securities Acts"). (Ct. Rec. 93 at 5.)

9       "To establish a claim for violation of federal securities law, it is  
10 necessary to show that the violation involved a 'security' as defined by  
11 the Securities Acts." *SEC v. Rubera*, 350 F.3d 1084, 1089 (9th Cir.  
12 2003). The Securities Acts are to be read liberally given "the virtually  
13 limitless scope of human ingenuity, especially in the creation of  
14 countless and variable schemes devised by those who seek to use the money  
15 of others on the promise of profits." *Reves v. Ernst & Young*, 494 U.S.  
16 56, 60-61 (1990) (internal quotations omitted). Thus, when deciding  
17 whether a transaction falls within the Securities Acts' parameters,  
18 districts courts focus on the economic realities involved in the  
19 transaction. *Rubera*, 350 F.3d at 1089.

20       The Securities Acts define "security" as, among other things, an  
21 "investment contract." *Id.* at 1090 (citing 15 U.S.C. §§ 77b(a)(1),  
22 78c(a)(10)). An investment contract is "any contract, transaction or  
23 scheme whereby a person invests his money in a common enterprise and is  
24 led to expect profits solely from the efforts of the promoter or third  
25 party." *Id.*

1 Here, Defendant Sean Morton, a self-proclaimed soothsayer and  
2 financial expert, claims that he can predict market changes by channeling  
3 his psychic powers. Based on Defendant Sean Morton's perceived  
4 abilities, Plaintiff entered into an agreement with the Morton Defendants  
5 in which Defendant Sean Morton would invest over \$200,000.00 of  
6 Plaintiff's money in foreign currency trading via the various Corporate  
7 Defendants.<sup>2</sup> Plaintiff and the Morton Defendants agreed to share in the  
8 investment returns. Given the financial relationship between Plaintiff  
9 and the Morton Defendants, as well as the liberal reading afforded to the  
10 Securities Acts, it is clear from the face of Plaintiff's Complaint that  
11 federal securities laws are implicated. Accordingly, federal subject-  
12 matter jurisdiction exists.

13 **C. Personal Jurisdiction and Venue**

14 The Morton Defendants alternatively argue that 1) the Court lacks  
15 personal jurisdiction over them, and 2) venue is improper. (Ct. Rec. 87  
16 at 3.)

17 Rule 12 states that the defenses of lack of personal jurisdiction or  
18 improper venue are waived if not timely raised in an answer or responsive  
19 pleading. See FED. R. CIV. P. 12(h)(1). The Ninth Circuit strictly  
20 adheres to this waiver, observing that "[a] fundamental tenet of the  
21 Federal Rules of Civil Procedure is that certain defenses under [Rule 12]  
22 must be raised at the first available opportunity or, if they are not,  
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24 <sup>2</sup>The Corporate Defendants are 1) 27 Investments, LLC, 2) Magic Eight  
25 Ball Distributing, Inc., 3) Vajra Productions, LLC, and 4) Delphi  
26 Associates Investment Group.

1 they are forever waived." *American Ass'n of Naturopathic Physicians v.*  
2 *Hayhurst*, 227 F.3d 1104, 1106 (9th Cir. 2000).

3 Here, the Morton Defendants answered Plaintiff's complaint without  
4 identifying either lack of personal jurisdiction or improper venue as  
5 affirmative defenses. (Ct. Rec. 2.) These defenses are therefore  
6 waived.

## 7 II. Conclusion

8 Accordingly, **IT IS HEREBY ORDERED:** The Morton Defendants' Motion to  
9 Vacate (Ct. Rec. 87) is **DENIED**.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
11 this Order and provide copies to counsel and Defendants.

12 **DATED** this 21<sup>st</sup> day of October 2009.

13  
14 S/ Edward F. Shea

15 EDWARD F. SHEA

16 United States District Judge

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